
MILITARY CAREGIVER LEAVE UNDER THE FMLA

A. Purpose

The purpose of this policy is to set forth guidelines and procedures to be followed in complying with Military Caregiver Leave under the Family and Medical Leave Act (FMLA) of 1993 (henceforth, "Act").

B. Persons Affected

Any eligible University of Texas Rio Grande Valley (UTRGV) employee who is the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness.

C. Definitions

1. An authorized health care provider – is any of the following:
 - a. United States Department of Defense ("DOD") health care provider;
 - b. United States Department of Veterans Affairs ("VA") health care provider;
 - c. DOD TRICARE network authorized private health care provider;
 - d. DOD non-network TRICARE authorized private health care provider; or
 - e. Non-military-affiliated health care provider.
2. Covered Service member - A current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.
3. Next of Kin - The "next of kin" of a current service member is the nearest blood relative, other than the current service member's spouse, parent, son, or daughter, in the following order of priority:
 - a. A blood relative who has been designated *in writing* by the service member as the next of kin for FMLA purposes
 - b. A blood relative who has been granted legal custody of the service member
 - c. Brothers and sisters
 - d. Grandparents
 - e. Aunts and uncles
 - f. First cousins

4. Serious Injury or Illness –

- a. One that is incurred by a service member in the line of duty on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty and that were aggravated by service in the line of duty on active duty.
- b. When a service member designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the service member's only FMLA next of kin. When a current service member has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the service member, all such family members are considered the service member's next of kin and may take FMLA leave to provide care to the service member.
- c. For example, if a current service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the service member's next of kin. Alternatively, where a current service member has one or more siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the service member's next of kin.

5. Single 12-Month Period –

- a. The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA leave reasons.
- b. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.
- c. Military caregiver leave is available to an eligible employee once per service member, per serious injury or illness. However, an eligible employee may take an additional 26 weeks of leave in a different 12-month period to care for the same service member if he or she has another serious injury or illness. For example, if an eligible employee takes military caregiver leave to care for a current service member who sustained severe burns, the employee would be entitled to an additional 26 weeks of caregiver leave in a different 12-month period if the same service member is later diagnosed with a traumatic brain injury that was incurred in the same incident as the burns.
- d. An eligible employee may also take military caregiver leave to care for more than one current service member or covered veteran with a serious injury or illness at the same time, but the employee is limited to a total of 26 weeks of military caregiver

leave in any single 12-month period. Additionally, an eligible employee may be able to take military caregiver leave for the same family member with the same serious injury or illness both when the family member is a current service member and when the family member is a veteran.

D. Policy

Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to provide care for the service member.

E. Procedure

1. An employee who wishes to take military caregiver leave for a current service member must provide certification his or her supervisor before leave will be approved. The certification requirement is met by submitting a certification completed by an authorized health care provider or by providing a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member’s family. Employees may use the U. S. Department of Labor’s optional form WH-385.
2. UTRGV may request a second or third opinion of a current service member’s serious injury or illness only when a certification is provided by a non-military-affiliated health care provider.

F. Relevant Federal and/or State Statute(s), Board of Regents’ Rule(s), UTS Policy(ies), and/or Coordinating Board Rule(s)

The Family and Medical Leave Act of 1993

29 Code of Federal Regulations Part 825

The University of Texas System Board of Regents’ *Rules and Regulations Rule 30201*, Leave Policies

ADM 4-608 Family and Medical Leave (FMLA)